

(4) *Commercial Fishing Operations.* The incidental mortality and serious injury of endangered and threatened Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(b) *Exceptions—(1) Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of part 222, subpart C—General Permit Procedures.

(2) *Official activities.* The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) *Subsistence takings by Alaska natives.* Paragraph (a) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) *Emergency situations.* Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) *Exemptions.* Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the FEDERAL REGISTER. An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the ac-

tivity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(6) *Navigational transit.* Paragraph (a)(2) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrows, or pass
Akutan Island	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks.	Between Clubbing Rocks and Cherni Island.
Outer Island ...	Wildcat Pass between Rabbit and Ragged Islands.

(c) *Penalties.* (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

[55 FR 49210, Nov. 26, 1990, as amended at 56 FR 42542, Aug. 28, 1991; 56 FR 58184, Nov. 18, 1991; 58 FR 16371, Mar. 26, 1993; 58 FR 53139, 53141, Oct. 14, 1993; 58 FR 58594, Nov. 2, 1993; 62 FR 24355, May 5, 1997, Redesignated and amended at 64 FR 14068–14069, Mar. 23, 1999]

§ 223.203 Anadromous fish.

(a) *Prohibitions.* The prohibitions of section 9 of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened species of salmon listed in § 223.102(a)(1) through (a)(4), except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened species of salmon listed in § 223.102(a)(1) through (a)(4).

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmon listed in § 223.102(a)(4) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the propagation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), by September 16, 1997. This exception ceases upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or on January 20, 1998 whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmon listed in § 223.102(a)(4) do not apply to any employee or agent of the NMFS, any other Federal land management agency, or the Oregon Department of Fish and Wildlife (ODFW) or the California Department of Fish and Game (CDFG), who is designated by his/her agency for such purposes, when that employee or agent, acting in the course of his/her official duties, takes a coho salmon in California or Oregon without a permit if such action is necessary to: (1) Aid a sick, injured, or stranded individual, (2) dispose of a dead individual, or (3) salvage a dead individual, which may be useful for scientific study.

[62 FR 38483, July 18, 1997. Redesignated and amended at 64 FR 14068–14069, Mar. 23, 1999]

§ 223.204 Exceptions to prohibitions relating to anadromous fish.

(a) The following exceptions to the prohibitions of § 223.203(a) of this part apply to the Southern Oregon/Northern California Coast (SONCC) coho salmon.

(1) Take of SONCC coho salmon within 3 miles (approximately 5 km) of the coast, and in the bay, estuarine or freshwater fisheries regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a fisheries harvest program conducted in accordance with the Oregon Coastal Salmon Restoration Initiative of March 1997 (OCSRI). NMFS must have issued a written concurrence that the fisheries regulations are consistent with the OCSRI, using information provided through the April 1997

Memorandum of Agreement (MOA) between the State of Oregon and NMFS.

(2) Incidental take of SONCC coho salmon in ocean fisheries within 3 miles (approximately 5 km) of the coast that are regulated under the sole authority of the State of California is not prohibited, provided that the ocean salmon fishing regulations adopted by the California Fish and Game Commission and CDFG for recreational and commercial fisheries within 3 miles (approximately 5 km) of the coast are consistent with the Pacific Fishery Management Council's Fishery Management Plan for Ocean Salmon Fisheries and the annual ocean salmon fishing regulations issued by the Secretary of Commerce for the Federal EEZ.

(3) Take of SONCC coho salmon in a hatchery program regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a hatchery program conducted in accordance with the OCSRI, and the take is counted against the total allocation of harvest-related mortality as specified in the OCSRI. NMFS must have issued a written concurrence stating that the hatchery program is consistent with the OCSRI including the hatchery and genetic management plan adopted pursuant to the OCSRI, using information provided through the MOA.

(4) Take of SONCC coho salmon in fisheries research and monitoring activities conducted in California and Oregon is not prohibited provided that:

(i) Research and monitoring involving directed take of coho salmon is conducted by CDFG personnel (in California) and ODFW personnel (in Oregon);

(ii) The CDFG and ODFW, respectively, provide NMFS with a list of all research and monitoring activities involving coho salmon directed take planned for the coming year for NMFS' review and approval. This report shall include an estimate of the total directed take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact;

(iii) The CDFG and ODFW, respectively, provide NMFS annually with the results of research and monitoring